

Testimony re Juvenile Adjudicative Competency

Committee on Judiciary
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On behalf of the Michigan Psychological Association, I want to thank you for addressing the issue of juvenile adjudicative competence. The legal treatment of children and adolescents should be informed by the most accurate and current scientific evidence on the nature and process of psychological development. As psychologists, we recognize the importance of emotional, psychosocial and cognitive functioning when assessing competence.

There are three specific areas in which we would like to propose specific changes in the language of the bills: The definition of competency/incompetency; definition of a qualified examiner and the age of presumption of incompetency.

Definition of "Qualified Examiner"

Proposed language:

*"Qualified examiner" means a psychiatrist or licensed mental health provider whose scope of practice, as defined by the Public Health Code, includes the rendering to individuals. . . services involving the application of principles, methods, and procedures of **understanding, predicting, and influencing behavior for the purposes of the diagnosis, assessment related to diagnosis. . . of mental or emotional disorders**, who the Court determines has the skills and training necessary to conduct the competency evaluation. The skills necessary to conduct the competency evaluation shall include, but are not limited to, knowledge, skill, training, and experience in all of the following:*

- *Forensic evaluation procedures for juveniles through formal instruction, professional supervision, or both*
- *The evaluation or treatment of children and adolescents with serious emotional **disorders**, mental illness, or developmental disabilities.*
- *Documented coursework in child and adolescent development.*
- *Demonstrated understanding of generally accepted competency standards and best practices as set forth in guidelines approved by the Department of Community Health.*
- *A minimum of five years of documented experience in administering tests of cognitive and psychological functioning.*

The Department of Community Health shall annually provide the courts with a list of professionals who have completed a training program approved by the Department to perform evaluations.

Rationale:

Assessment of clinical, psychosocial and cognitive functioning must include objective **psychological** testing. For example, the level of abstract thinking of a juvenile is an essential component of the competency evaluation. The only way to assess abstract thinking is with testing instruments that are administered by mental health providers with training and experience in administration of such tests. Only psychologists are permitted to administer these tests in school settings; the standards for assessing children and youth in the juvenile justice system should be consistent. Competence in administering “appraisal techniques” designed to assess an individual's aptitudes, interests, attitudes, abilities, achievements, and personal characteristics for developmental purposes is not adequate for the assessment of cognitive, emotional and psychosocial functioning.

Definition of “Incompetent to Proceed”

Proposed language:

*“Incompetent to proceed” means that a juvenile lacks **adequate** rational and factual understanding of the proceedings, is unable to understand the nature or object of the proceeding, and is unable to assist in his or her defense in a meaningful way. A determination of juvenile incompetency must be made in terms of **age-appropriate** norms. Elements of juvenile incompetency include, but are not limited to, mental or physical disorder, mental retardation or developmental disability, learning disabilities, cognitive or intellectual deficit, cognitive or **psychosocial** immaturity, or other functional deficit.*

Rationale:

Based on clinical and neuroscience research, it is well documented that cognitive and psychosocial status are as important in the assessment of a juvenile's competence to stand trial as clinical status. For example, youths with low IQ show significantly higher indications of adjudicative incompetency than youths of the same age with normal IQ. Psychosocial maturity includes such indices as risk perception, sensation seeking, impulsivity, resistance to peer pressure and future orientation. Developmental science has documented that the widest gap in the relative maturity of adolescents and adults is psychosocial maturity, necessitating an assessment of this factor in a juvenile competency evaluation.

Age of Presumption of Incompetency

Proposed language:

A juvenile under 12 years old is presumed incompetent to proceed unless the issue of competency is raised by a party. A juvenile 12 years of age or older is presumed competent to proceed unless the issue of incompetency is raised by a party.

Rationale: Scientific research (MacArthur Foundation, NIMH) clearly indicate that competency varies significantly with age, intelligence and developmental factors. According to the NIMH, MRI studies clearly indicate that actual brain development continues into adolescence. The frontal lobe, the seat of “executive function,” or the ability to plan, control impulses and reason, does not complete development until early adolescence. The frontal lobe determines the level of precisely those skills necessary for adjudicative competency. A highly regarded study

(Grisso, 2003) found that juveniles between the ages of 11 and 13 were over three times more likely than young adults (18-24) to demonstrate serious competency-relevant impairment. They also found that youth under age 15 differed from adults in their ability to recognize risks inherent in different choices, as well as their ability to consider long-term implications of choices they make. The age of presumption of incompetency must be based on clinical findings on the average functional maturity of youth rather than external factors.

Thank you for the opportunity to comment on these bills.

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